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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91166487
Party	Plaintiff HASBRO, INC. HASBRO, INC. 1027 Newport Avenue Pawtucket, RI 02862
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Attachments	STIPULATION AND ORDER.pdf (10 pages)(322903 bytes)

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In the Matter of Application Serial No. 78/359,895

Filed: January 30, 2004

For the Mark: MEMORY MAGIC in International Class 28

Published in the Official Gazette: May 10, 2005 at TM 330

HASBRO, INC.,

Opposer,

v.

Opposition No. 91/166,487

CREATIVE ACTION, LLC,

Applicant.

**STIPULATION AND ORDER FOR
PROTECTION AND CONFIDENTIALITY**

The parties engaged in this Opposition have agreed that it would serve their interests to conduct certain discovery in this action under a protective order pursuant to 37 CFR § 2.120(f) and Fed. R. Civ. P. 26(c); and it appearing that certain discovery is likely to involve trade secrets or other confidential information; and relying on the terms of this Protective Order in responding to discovery;

IT IS HEREBY ORDERED THAT:

1. This Protective Order shall apply to all information, documents and things subject to discovery or otherwise submitted to the Trademark Trial and Appeal Board (the "Board") in this action, which are owned or controlled by a party or nonparty and believed in good faith by that party or nonparty to contain its trade secrets or other confidential business information, including without limitation testimony adduced at

depositions upon oral examination or upon written questions, answers to interrogatories, documents produced, information obtained from inspection of premises or things, and answers to requests for admission. The term "CONFIDENTIAL MATERIALS" shall include all the foregoing and all information, documents and things derived therefrom, including but not limited to copies, summaries or abstracts thereof.

2. The producing party or nonparty ("producing person") shall label or mark documents and things that it deems to be CONFIDENTIAL MATERIALS with the legend "CONFIDENTIAL" on the face thereof at the time of production or copying. The designation of any information, documents or things as CONFIDENTIAL shall constitute a representation that counsel, in good faith, believes that the item so designated contains CONFIDENTIAL MATERIAL as that term is defined herein.

a. Where large numbers of documents are produced for inspection, the producing person may produce them with a written statement that the information contained in the documents is confidential and then specifically label or mark with the above legend only those documents of which the opposing party requests a copy.

b. If the confidentiality label is inadvertently omitted, the producing person may subsequently request that the receiving party treat previously produced information or documents as CONFIDENTIAL MATERIALS by sending copies appropriately marked. The receiving party will comply with the request to the extent possible after such request, and such information or documents shall be fully subject to this Protective Order to the extent that the documents or contents thereof have not already been disclosed beyond those permitted access in paragraph 5 below.

3. As to depositions upon oral examination or testimony, if any counsel so states before the record is closed, the testimony of the witness shall be deemed CONFIDENTIAL MATERIALS until the expiration of twenty (20) calendar days after the receipt by counsel of the record of the transcript. The transcript may only be shown to the persons specified in paragraph 5 below during the twenty (20) calendar day period. If counsel of record believes that the transcript or portions thereof constitutes CONFIDENTIAL MATERIALS, counsel shall designate in writing to other counsel of record within that twenty-day period the specific pages and lines constituting such CONFIDENTIAL MATERIALS.

4. CONFIDENTIAL MATERIALS shall be used solely for the purpose of this opposition and of pursuing or defending legal rights directly relating to this opposition, and not for any other purpose, including but not limited to use in any business or commercial enterprise.

5. Access to CONFIDENTIAL MATERIALS or dissemination thereof shall be limited to the following, unless and until the Board rules that there may be further disclosure:

(a) those attorneys and their staff actively involved in the opposition or supervision of the opposition of this matter who are (i) employed by counsel of record in this action or (ii) regularly employed in the legal departments of the parties; and the other employees in those law firms or legal departments whose functions require access to CONFIDENTIAL MATERIALS;

(b) the authors, senders, addressees, and copy recipients of such CONFIDENTIAL MATERIALS and employees of the producing person;

(c) non-party independent consultants or experts engaged by counsel or the parties to assist in this litigation, provided that each such consultant or expert has the need to learn the content of such CONFIDENTIAL MATERIALS and has signed an undertaking in the form of Exhibit A annexed hereto before being provided with discovery materials protected by this Order;

(d) commercial copy services, translators, and data entry and computer support organizations hired by and assisting outside counsel for a party, provided that the CONFIDENTIAL MATERIALS disclosed to these entities are marked "CONFIDENTIAL"; and

(e) any other person as to whom the parties first agree in writing and who signs an undertaking in the form of Exhibit A annexed hereto before being provided with discovery materials protected by this Protective Order.

These restrictions may be altered or supplemented only by written stipulation between the parties filed with and approved by the Board.

6. Nothing in this Protective Order shall bar or otherwise restrict any counsel referred to in paragraph 5(a) from rendering advice to his client with respect to this action, and, in the course thereof, from relying in a general way upon his examination of CONFIDENTIAL MATERIALS, provided, however, that in rendering such advice, and in otherwise communicating with his client, such counsel shall not disclose the contents or substance of any CONFIDENTIAL MATERIALS.

7. If any CONFIDENTIAL MATERIALS or pleadings or other papers containing CONFIDENTIAL MATERIALS must be filed with the Board in connection with any motions or other proceedings herein, the papers shall be submitted to the Board

in a separate sealed envelope or other sealed container bearing the proceeding number and name, indication of the general nature of the contents of the envelope or container, and, in large letters, the designation "CONFIDENTIAL." Where possible, only CONFIDENTIAL portions of the filings with the Board shall be filed under seal.

8. For purposes of this Order, "interested person" means any party or non-party whose CONFIDENTIAL MATERIALS have been produced in this litigation. If, at any hearing in connection with any motion or other proceeding, or at trial, a party intends to rely upon or offer into evidence any CONFIDENTIAL MATERIAL, that party shall inform all interested persons a reasonable time in advance so that all parties and interested persons may take such steps as they deem reasonably necessary to preserve the confidentiality of such material.

9. The acceptance of information, documents or things designated as CONFIDENTIAL MATERIALS by any party shall not constitute an admission or concession, permit any inference, or create a presumption that any such designation is in fact merited or appropriate. Any party challenging a CONFIDENTIAL designation shall designate in writing to the producing person those portions of the information, documents and things challenged as improperly designated and may, after conferring in good faith with opposing counsel, move this Board for an order that the designated information, documents or things shall not be accorded the protection for which the producing person has designated them. If such a motion is made, nothing herein shall alter any burden of proof that would otherwise apply in determining whether the subject information, documents or things are within the scope of 37 CFR § 2.120(f) or Fed. R. Civ. P. 26(c)(7) and are properly designated. Any information, documents or things as to which such a

motion is served shall be accorded the protection for which they have been designated until the motion is determined, and if the motion is denied, for as long as the order denying the motion remains in effect.

10. The parties are engaging in discovery in reliance on the terms of this Protective Order. Subject to the foregoing, this Protective Order shall not prevent or prejudice any party from applying to the Board for relief therefrom, or from applying to the Board for further or additional protective orders, or from agreeing with the other party to a modification of this protective order, subject to the approval of the Board.

11. Within sixty (60) days after final termination of this action, either by settlement, expiration of the time to appeal, or after issuance of the appellate mandate after an appeal, receiving counsel of record either shall return all CONFIDENTIAL MATERIALS including all copies, abstracts, or summaries thereof, or documents containing information taken therefrom, but excluding opposition papers or exhibits or any materials which in the judgment of receiving counsel are work product materials of said counsel in its possession, custody, or control, to counsel for the party who has provided them in discovery or shall certify destruction thereof; provided, however, that one counsel of record for each party may retain one copy of all CONFIDENTIAL MATERIALS, including all opposition papers, hearing or trial exhibits, and deposition exhibits, solely for reference in the event of a dispute over the use or dissemination of information subject to the terms herein established or over compliance with the final judgment.

12. This Protective Order shall not be construed as an agreement by any person to produce or supply any document, or as a waiver by any person of his right to

object to the production of any document, or as a waiver of any claim of privilege with regard to the production of any document.

13. Notwithstanding any designation of confidentiality by any party, nothing herein shall prevent any party from using, without restriction, any material that is:


- (a) obtained from sources available to the public;
- (b) obtained from a third party who is free to disclose such material to the receiving party without breach of an obligation to the non-receiving party; or
- (c) in the possession of a non-producing party prior to its production by a producing party.

14. In the event that attorney-client privileged information or attorney work product materials are produced inadvertently to the opposing party pursuant to document production, and if counsel for the party producing the privileged material requests the return of the material within fourteen (14) days of discovering such inadvertent disclosure, counsel for the receiving party shall return the material promptly, without retaining copies, and there shall be no waiver of the attorney-client privilege or work product immunity by reason of such inadvertent disclosure. If the receiving party has extracted, copied, or used information from a document or other discovery material that is subsequently returned pursuant to the immediately preceding sentence, to the extent possible the extracted, copied, or used information will be expunged promptly and not used thereafter. However, to the extent that, prior to being notified of the inadvertent production, the receiving party uses such information in good faith in documents filed with the Board or at depositions, the receiving party will have no obligation to expunge such information from or otherwise alter any such documents filed with the Board or the

transcript of any such deposition. The foregoing shall not detract from or otherwise affect applicable law to the extent that one party notifies the other of inadvertent disclosure of allegedly privileged material more than 14 days after the inadvertent disclosure.

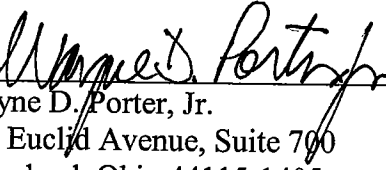
Dated: June 5, 2006

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SO ORDERED on _____, 2006

[EXHIBIT A]
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CREATIVE ACTION, LLC,

Applicant.

CONSENT TO BE BOUND BY
PROTECTIVE ORDER

The undersigned hereby certifies that he or she has read the Protective Order in this action and agrees to be bound by it and that he or she voluntarily submits to the personal jurisdiction of the Trademark Trial and Appeal Board of the United States Patent and Trademark Office for purposes of the enforcement of the above-specified Protective Order and the imposition of any sanctions for contempt thereof by the undersigned.

[signature]

Sworn to before me this
_____ day of _____, 2006

Notary Public